

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Civ. No. 11-675

**FUNDS IN THE AMOUNT OF \$33,534.93
ACCOUNT NUMBER ENDING **8429
FROM BANK OF AMERICA,**

**FUNDS IN THE AMOUNT OF \$5,118.11
ACCOUNT NUMBER ENDING **5054
FROM BANK OF AMERICA,**

Defendant,

and

**BRICIA E. HERRERA-HERNANDEZ AND
SILVIA Q. ANAYA,**

Claimants.

ANSWER TO VERIFIED COMPLAINT FOR FORFEITURE *IN REM*

Claimant, Bricia E. Herrera-Hernandez, by and through her counsel of record, Marcos Gonzalez, hereby submits her Answer to the Verified Complaint for Forfeiture *In Rem*. For her Answer, Claimant states:

JURISDICTION AND VENUE

1. As to paragraph 1 of the Complaint, it states a legal conclusion and therefore requires no answer from Ms. Herrera-Hernandez.
2. As to paragraph 2 of the Complaint, Ms. Herrera-Hernandez admits that jurisdiction under the United States District Court for the District of New Mexico is proper.
3. As to paragraph 3 of the Complaint, Ms. Herrera-Hernandez admits that the United States District Court for the District of New Mexico is the proper venue for this action.

4. As to paragraph 4 of the Complaint, Ms. Herrera-Hernandez admits the allegations contained therein.

PARTIES AND CLAIMANTS

5. As to paragraph 5 of the Complaint, Ms. Herrera-Hernandez admits the allegations contained therein.

FACTS

6. As to paragraph 6 of the Complaint, Ms. Herrera-Hernandez is without knowledge or information sufficient to form a belief as to the allegation regarding the results of the query of the New Mexico Department of Workforce Solutions contained therein and hence denies same. As for the remainder of the allegations set forth therein, Ms. Herrera-Hernandez states that the records from Bank of America speak for themselves.

7. As to paragraph 7 of the Complaint, Ms. Herrera-Hernandez states that the records from Bank of America speak for themselves.

8. As to paragraph 8 of the Complaint, Ms. Herrera-Hernandez is without knowledge or information sufficient to form a belief as to the allegation regarding the investigation of DEA Special Agent Ivar Hella contained therein and hence denies same. As for the remainder of the allegations set forth therein, Ms. Herrera-Hernandez states that the referenced documents speak for themselves.

9. As to paragraph 9 of the Complaint, Ms. Herrera-Hernandez is without knowledge or information sufficient to form a belief as to the allegation regarding the investigation into her finances contained therein and hence denies same. As for the remainder of the allegations set forth therein, Ms. Herrera-Hernandez states that the bank records speak for themselves.

10. As to paragraph 10 of the Complaint, Ms. Herrera-Hernandez is without knowledge or information sufficient to form a belief as to the allegation regarding the investigation into her finances contained therein and hence denies same. As for the remainder of the allegations set forth therein, Ms. Herrera-Hernandez states that the bank records speak for themselves.

11. As to paragraph 11 of the Complaint, Ms. Herrera-Hernandez states that the bank records speak for themselves.

12. As to paragraph 12 of the Complaint, Ms. Herrera-Hernandez states that the bank records speak for themselves.

13. As to paragraph 13 of the Complaint, Ms. Herrera-Hernandez is without knowledge or information sufficient to form a belief as to the allegation regarding the investigation into the Alfredo Pena-Aispuro drug trafficking organization contained therein and hence denies same. Ms. Herrera-Hernandez admits that her sister, Brenda Herrera-Barraza was arrested and that Ms. Herrera-Barraza, at some point, resided at 2933 Owen SW, Albuquerque, New Mexico. As for the last sentence of paragraph 13, Ms. Herrera-Hernandez is without knowledge or information sufficient to form a belief as to the allegation regarding where one of the “main targets [sic] the investigation” was arrested contained therein and hence denies same.

14. As to paragraph 14 of the Complaint, Ms. Herrera-Hernandez admits that she is the registered owner of a red Buick Century, but is without knowledge or information sufficient to form a belief as to the allegations regarding the observations of a red Buick Century by unnamed witnesses contained therein and hence denies same. As for the remaining allegations contained in paragraph 14, Ms. Herrera-Hernandez is without knowledge or information sufficient to form a belief as to the allegations regarding the observations of a red Buick Century by unnamed witnesses contained therein and hence denies same.

15. As to paragraph 15 of the Complaint, it states a legal conclusion and therefore requires no answer from Ms. Herrera-Hernandez.

CLAIM FOR RELIEF

16. As to paragraph 16 of the Complaint, it states a legal conclusion and therefore requires no answer from Ms. Herrera-Hernandez.

17. As to paragraph 17 of the Complaint, it states a legal conclusion and therefore requires no answer from Ms. Herrera-Hernandez.

18. As to paragraph 18 of the Complaint, it states a legal conclusion and therefore requires no answer from Ms. Herrera-Hernandez.

AFFIRMATIVE DEFENSES

19. As a separate and independent defense, Ms. Herrera-Hernandez asserts that the forfeiture is grossly disproportional to the offense and therefore the Court must reduce or eliminate the forfeiture in order to avoid a violation of the Excessive Fines Clause of the Eighth Amendment of the Constitution.

20. As a separate and independent defense, Ms. Herrera-Hernandez asserts that she is an innocent owner whose interest is protected under 18 U.S.C. § 983(d).

WHEREFORE, Claimant prays:

1. That this action be dismissed;
2. That her property is returned and she is awarded interest and reasonable attorney's fees; and
3. For such other and further relief as may be deemed just and equitable.

JURY DEMAND

Claimant hereby demands trial by jury on all issues.

Respectfully Submitted,

/s/ electronically filed

Marcos Gonzalez
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I hereby certify that a true and correct copy of
the foregoing was served upon opposing counsel
on August 26, 2011, by electronic delivery
through the Court's CM/ECF filing system.

/s/ electronically filed

Marcos Gonzalez